

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION NO.251 OF 2017

ORDER:

This Transfer Criminal Petition is filed under Section 407 of the Code of Criminal Procedure (Cr.P.C.) seeking transfer of CrI.A.No.272 of 2014 from the file of the I Additional District Judge-cum-Metropolitan Sessions Judge at Visakhapatnam to this Court in view of the Division Bench judgment of this Court in CrI.P.No.16742 of 2016 (Smt. P.Vijaya Laxmi v. Smt. S.P.Sravana and another dated 27.10.2017).

The petitioner is the appellant before the I Additional District Judge-cum-Metropolitan Sessions Judge at Visakhapatnam, who filed a private complaint under Sections 138 and 142 of the Negotiable Instruments Act in C.C.No.200 of 2013, which ended in acquittal after full-fledged trial by the Special Magistrate-III, Visakhapatnam but the appeal was preferred before the Sessions Court in view of Section 372 read with Section 2(wa) Cr.P.C. as amended. While the matter stood thus, in CrI.P.No.16742 of 2016, the Division Bench of this Court held that an appeal against an acquittal is maintainable with the leave of the Court before the High Court but no appeal is maintainable against an acquittal in a complaint case to the Sessions Court. In view of the law declared by this Court, counsel for the petitioner sought withdrawal and transfer of the matter.

The Division Bench of this Court felt that the Sessions Court has no jurisdiction to entertain an appeal against an acquittal in a complaint case and it is the duty of the Sessions Court to return

the appeal pending before it against an acquittal in a complaint case so as to enable them to file an appeal with the leave of this Court under Section 378(4) Cr.P.C. This Court need not withdraw and transfer the appeal pending on the file of the I Additional District Judge-cum-Metropolitan Sessions Judge at Visakhapatnam and it is the duty of the Metropolitan Sessions Judge to take appropriate steps for return of the appeal for presentation before the Sessions Court under Section 378(4) Cr.P.C. with special leave subject to permissibility under law or otherwise dismiss the appeal, if found that appeal is not returnable.

With the above direction, the Criminal Petition is disposed of. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

21st November 2017

NOTE: Issue CC by one week
B/O
RRB